

Panaji, 9th January, 1996 (Pausa 19, 1918)

X
SERIES I No. 41

OFFICIAL GAZETTE

GOVERNMENT OF GOA



NOTE: There are four Extraordinary issues to the Official Gazette, Series I No. 40 dated 2-1-97 as follows:

- 1) Extraordinary dated 2-1-1997 from pages 543 to 554 regarding Notification from Department of Panchayat Raj and Community Development (Directorate of Panchayats).
- 2) Extraordinary No. 2 dated 6-1-97 from pages 555 to 568 regarding Notification from Department of Law and Judiciary (Legal Affairs Division).
- 3) Extraordinary No. 3 dated 6-1-97 from pages 569 to 570 regarding Notification from Department of General Administration and Department of Power.
- 4) Extraordinary No. 4 dated 7-1-97 from pages 571 to 572 regarding Notification from Department of Panchayat Raj and Community Development (Directorate of Panchayats) and Department of Urban Development.

GOVERNMENT OF GOA

Department of Law & Judiciary

Legal Affairs Division

Notification

10/5/95/LA

The Telecom Regulatory Authority of India Ordinance, 1996 (Ordinance No. 10 of 1996) which has been promulgated by the President of India and published in the Gazette of India, Extraordinary, Part II, Section 1, dated 27th January, 1996 is hereby published for the general information of the public.

P. V. Kadneker, Joint Secretary (Law).

Panaji, 26th February, 1996.

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 27th January, 1996/Magha 7, 1917 (Saka)

THE TELECOM REGULATORY AUTHORITY OF INDIA ORDINANCE, 1996

No. 10 of 1996

Promulgated by the President in the Forty-seventh Year of the Republic of India.

An Ordinance to provide for the establishment of the Telecom Regulatory Authority of India to regulate the telecommunication services, and for matters connected therewith or incidental thereto.

Whereas Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, Therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

CHAPTER I

Preliminary

1. *Short title, extent and commencement.*— (1) This Ordinance may be called the Telecom Regulatory Authority of India Ordinance, 1996.

(2) It extends to the whole of India.

(3) It shall come into force at once.

2. *Definitions.*— (1) In this Ordinance, unless the context otherwise requires,—

(a) “appointed day” means the day with effect from which the Authority is established under sub-section (1) of section 3;

(b) “Authority” means the Telcom Regulatory Authority of India established under sub-section (1) of Section 3;

(c) “Chairperson” means the Chairperson of the Authority appointed under sub-section (3) of section 3;

(d) “Fund” means the Fund constituted under sub-section (1) of Section 22;

(e) “member” means a member of the Authority appointed under sub-section (3) of section 3 and includes the Chairperson and the Vice-Chairperson;

(f) “notification” means a notification published in the Official Gazette;

(g) “prescribed” means prescribed by rules made under this Ordinance;

(h) “regulations” means regulations made by the Authority under this Ordinance;

(i) “telecommunication service” means service of any description (including electronic mail, voice mail, data services, audio tex services, video tex services, radio paging and cellular mobile telephone services) which is made available to users by

means of any transmission or reception of signs, signals, writing images and sounds or intelligence of any nature, by wire, radio, visual or other electro-magnetic means.

(2) Words and expressions used and not defined in this Ordinance but defined in the Indian Telegraph Act, 1885 or the Indian Wireless Telegraphy Act, 1933, shall have the meanings respectively assigned to them in those Acts.

13 of 1885
17 of 1933

(3) Any reference in this Ordinance to a law which is not in force in the State of Jammu and Kashmir shall in relation to that State be construed as a reference to the corresponding law, if any, in that State.

CHAPTER II

Telecom Regulatory Authority of India

3. *Establishment and incorporation of the Authority.*— (1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Ordinance, an Authority to be called the Telecom Regulatory Authority of India.

(2) The Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Ordinance, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

(3) The Authority shall consist of a Chairperson, and not less than two, but not exceeding four members, to be appointed by the Central Government.

(4) The head office of the Authority shall be at New Delhi.

4. *Qualifications for appointment of Chairperson and other members.*— (1) The Chairperson shall be a person who is or has been a Judge of the Supreme Court or who is or has been the Chief Justice of a High Court.

(2) A member shall be a person who has held the post of Secretary or Additional Secretary, or the posts of Additional Secretary and Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a period of three years.

5. *Term of office, conditions of service, etc., of Chairperson and other members.*— (1) Before appointing any person as the Chairperson or member, the Central Government shall satisfy itself that the person does not have any such financial or other interest as is likely to affect prejudicially his functions as such member.

(2) The Chairperson shall hold office for a term of five years from the date on which he enters upon his office.

(3) A member shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-two years, whichever is earlier.

(4) The employee of the Government on his selection as member shall have to retire from service before joining as member.

(5) The salary, allowances and other conditions of service of the Chairperson shall be,—

(a) if he has been a Judge of the Supreme Court, the same as that of a Judge of the Supreme Court;

(b) if he has been the Chief Justice of a High Court, the same as that of the Chief Justice of the High Court;

Provided that in the case of an appointment of a person as a Chairperson who has retired as a Judge of the Supreme Court

or a Chief Justice of a High Court and who is in receipt of or has received or has become entitled to receive any retirement benefits by way of pension, gratuity or other forms of retirement benefits, the pay of such person shall be reduced by the gross amount of pension and pension equivalent of gratuity or any other form of retirement benefits, if any, drawn or to be drawn by him.

(6) The salary and allowances payable and other conditions of service of the members shall be such as may be prescribed.

(7) The salary, allowances and other conditions of service of the Chairperson or of the members shall not be varied to his disadvantage after appointment.

(8) Notwithstanding anything contained in sub-section (2) or sub-section (3), a member may—

(a) relinquish his office by giving in writing to the Central Government notice of not less than three months; or

(b) be removed from his office in accordance with the provisions of section 7.

(9) The Chairperson or any other member ceasing to hold office as such, shall—

(a) be ineligible for further employment either under the Government of India or under the State Government; or

(b) not hold any appointment in any private company in telecom sector in relation to which any matter has been the subject matter of consideration before the Authority.

6. *Powers of Chairperson and Vice-Chairperson.*— (1) The Chairperson shall have powers of general superintendence and directions in the conduct of the affairs of the Authority and he shall, in addition to presiding over the meetings of the Authority, exercise and discharge such powers and functions of the Authority and shall discharge such other powers and functions as may be prescribed.

(2) The Central Government may appoint one of the members to be a Vice-Chairperson of the Authority who shall exercise and discharge such powers and functions of the Chairperson as may be prescribed or as may be delegated to him by the Authority.

7. *Removal of members from office in certain circumstances.*—

(1) The Central Government may remove from office any member, who—

(a) has been adjudged as insolvent; or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as a member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) Notwithstanding anything contained in sub-section (1), no member shall be removed from his office on the ground specified in clause (d) or clause (e) of that sub-section unless the Supreme Court on a reference being made to it in this behalf by the Central Government, has, on an inquiry, held by it in accordance with such procedure as it may specify in this behalf, reported that the member ought, on such ground or grounds, to be removed.

8. *Meetings:*— (1) The Authority shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be provided by regulations.

(2) The Chairperson or, if for any reason, he is unable to attend a meeting of the Authority, the Vice-Chairperson and in his absence, any other member chosen by the members present from amongst themselves at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Authority shall be decided by a majority vote of the members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding, shall have a second or casting vote.

(4) The Authority may make regulations for the transaction of business at its meetings.

9. *Vacancies, etc., not to invalidate proceedings of the Authority:*— No act or proceeding of the Authority shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Authority; or

(b) any defect in the appointment of a person acting as a member of the Authority; or

(c) any irregularity in the procedure of the Authority not affecting the merits of the case.

10. *Officers and other employees of Authority:*— (1) The Authority may appoint officers and such other employees as it considers necessary for the efficient discharge of its functions under this Ordinance.

(2) The salary and allowances payable to and the other conditions of service of the officers and other employees of the Authority appointed under sub-section (1) shall be such as may be determined by regulations.

CHAPTER III

Powers and Functions of the Authority

11. *Functions of Authority:*— (1) Notwithstanding anything contained in the Indian Telegraph Act, 1885, the functions of the Authority shall be to—

(a) ensure technical compatibility and effective inter-relationship between different service providers;

(b) regulate arrangement amongst service providers of sharing their revenue derived from providing telecommunication services;

(c) ensure compliance of licence conditions by all service providers;

(d) lay down and ensure the time period for providing local and long distance circuits of telecommunication between different service providers;

(e) facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services;

(f) protect the interest of the consumers of telecommunication service;

(g) settle disputes between service providers;

(h) render advice to the Central Government in the matters relating to the development of telecommunication technology and any other matter relatable to telecommunication industry in general;

(i) levy fees at such rates and in respect of such services as may be determined by regulations;

(j) ensure effective compliance of universal service obligations;

(k) perform such other functions including such administrative and financial functions as may be entrusted to it by the Government or as may be necessary to carry out the provisions of this Ordinance.

(2) Notwithstanding anything contained in the Indian Telegraph Act, 1885, the Authority may, from time to time, by order, notify the rates at which the telecommunication services within India and outside India shall be provided under this Ordinance including the rates at which messages shall be transmitted to any country outside India.

(3) While discharging its functions under sub-section (1), the Authority shall not act against the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.

(4) The Authority shall ensure transparency while exercising its powers and discharging its functions.

12. *Power of Authority to call for information, conduct investigations, etc.:*— (1) Where the Authority considers it expedient so to do, it may, by order in writing,—

(a) call upon any service provider at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require; or

(b) appoint one or more persons to make an inquiry in relation to the affairs of any service provider; and

(c) direct any of its officers or employees to inspect the books of account or other documents of any service provider.

(2) Where any inquiry in relation to the affairs of a service provider has been undertaken under sub-section (1),—

(a) every director, manager, secretary or other officer, if such service provider is a company; or

(b) every partner, manager, secretary or other officer, if such service provider is a firm; or

(c) every other person or body of persons who has had dealings in the course of business with any of the persons mentioned in clauses (a) and (b),

shall be bound to produce before the Authority making the inquiry, all such books of account or other documents in his custody or power relating to, or having a bearing on the subject matter of such inquiry and also to furnish to the Authority with any such statement or information relating thereto, as the case may be required of him, within such time as may be specified.

(3) Every service provider shall maintain such books of account or other documents as may be prescribed.

(4) The Authority shall have the power to issue such directions to service providers as it may consider necessary, for proper functioning by service providers.

13. Power of Authority to issue directions.— The Authority may, for the discharge of its functions under sub-section (1) of section 11, issue such directions from time to time to the service providers, as it may consider necessary.

CHAPTER IV

Settlement of Disputes

14. Authority to settle disputes.— (1) If a dispute arises, in respect of matters referred to in sub-section (2), among service providers or between service providers and a group of consumers, such disputes shall be adjudicated by a bench constituted by the Chairperson and such bench shall consist of two members:

Provided that if the members of the bench differ on any point or points they shall state the point or points on which they differ and refer the same to a third member for hearing on such point or points and such point or points shall be decided according to the opinion of that member.

(2) The bench constituted under sub-section (1) shall exercise, on and from the appointed day all such jurisdiction, powers and authority as were exercisable immediately before that day by any Civil Court on any matter relating to —

(i) technical compatibility and inter-connections between service providers;

(ii) revenue sharing arrangements between different service providers;

(iii) quality of telecommunication service and interest of consumers:

Provided that nothing in this sub-section shall apply in respect of matter relating to —

(a) the monopolistic trade practice, restrictive trade practice and unfair trade practice which are subject to the jurisdiction of the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the Monopolies and Restrictive Trade Practices Act, 1969;

(b) the complaint of an individual consumer maintainable before a Consumer Disputes Redressal Forum or a Consumer Disputes Redressal Commission or a National Consumer Redressal Commission established under section 9 of the Consumer Protection Act, 1986;

(c) dispute between telegraph authority and any other person referred to in sub-section (1) of section 7B of the Indian Telegraph Act, 1885.

15. Filing of application to Authority and procedure for passing order by it.— (1) An aggrieved person may make an application in respect of matters referred to in sub-section (2) of section 14 within such period as may be prescribed.

Explanation.— For the purposes of this sub-section, the expression "aggrieved person" means—

(i) any service provider who has a dispute in respect of matters referred to in clauses (i) and (ii) of sub-section (2) of section 14;

(ii) where any loss or damage is caused to a group of consumers, any member representing such group of consumers.

(2) On receipt of an application made under sub-section (1), the Authority may, after giving the parties an opportunity of being heard, pass such orders as it thinks, fit.

(3) While arriving at a decision, the Authority shall record in writing the reasons for such decision.

(4) Every decision of the Authority shall be published in the annual report of the Authority.

(5) The orders and directions of the Authority shall be binding on the service providers, Government and all other persons concerned.

16. Procedure and powers of Authority.— (1) The Authority shall be guided by the principles of natural justice.

(2) The Authority shall have, for the purpose of discharging their functions under this Chapter, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commission for the examination of witnesses or documents;

(e) reviewing its decisions;

(f) dismissing an application for default or deciding it *ex parte*;

(g) setting aside any order of dismissal of any application for default or any order passed by it *ex parte*;

(h) any other matter which may be prescribed.

(3) Every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code and the Authority shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

17. *Right to legal representation.* — The applicant may either appear in person or authorise one or more legal practitioners or any of its officers to present his or its case before the Authority.

18. *Appeal to High Court.* — Any person aggrieved by any decision or order of the Authority may file an appeal to the High Court within thirty days from the date of communication of the decision or order of the Authority to him;

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

19. *Orders passed by Authority or High Court to be executable as a decree.* — Every order made by the Authority under this Ordinance or the order made by the High Court in any appeal against any order of the Authority shall, on a certificate issued by any officer of the Authority or the Registrar of the High Court, as the case may be, be deemed to be a decree of the civil court and shall be executable in the same manner as a decree of that court.

20. *Penalty for wilful failure to comply with orders of Authority or of High Court.* — If any person wilfully fails to comply with the orders of the Authority or any order of the High Court, as the case may be, he shall be punishable with imprisonment for a term which may extend to two years, or fine or with both.

CHAPTER V

Finance, Accounts and Audit

21. *Grants by the Central Government.* — The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Authority grants of such sums of money as that Government may think fit for being utilised for the purposes of this Ordinance.

22. *Fund.* — (1) There shall be constituted a fund to be called the Telecom Regulatory Authority of India General Fund and there shall be credited thereto—

(a) all grants, fees and charges received by the Authority under this Ordinance; and

(b) all sums received by the Authority from such other sources as may be decided upon by the Central Government.

(2) The Fund shall be applied for meeting—

(a) the salaries, allowances and other remuneration of the members, officers and other employees of the Authority;

(b) the expenses of the Authority in the discharge of its functions under this Ordinance; and

(c) the expenses on objects and for purposes authorised by this Ordinance.

23. *Accounts and audit.* — (1) The Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Authority shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has, in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Authority.

(4) The accounts of the Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

24. *Furnishing of returns, etc., to Central Government.* — (1) The Authority shall furnish to the Central Government at such time and in such form and manner as may be prescribed or as the Central Government may direct, such returns and statements and such particulars in regard to any proposed or existing programme for the promotion and development of the telecommunication services, as the Central Government may, from time to time, require.

(2) The Authority shall prepare once every year in such form and at such time as may be prescribed, an annual report giving a summary of its activities during the previous year and copies of the report shall be forwarded to the Central Government.

(3) A copy of the report received under sub-section (2) shall be laid, as soon as may be after it is received, before each House of Parliament.

CHAPTER VI

Miscellaneous

25. *Power of Central Government to issue directions.* — (1) The Central Government may, from time to time, issue to the Authority such directions as it may think necessary in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.

(2) Without prejudice to the foregoing provisions, the Authority shall, in exercise of its powers or the performance of its functions, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Provided that the Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(3) The decision of the Central Government whether a question is one of policy or not shall be final.

26. *Members, officers and employees of Authority to be public servants.* — All members, officers and other employees of the Authority shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Ordinance to be public servants within the meaning of section 21 of the Indian Penal Code.

27. *Bar of jurisdiction.* — No civil court shall have jurisdiction in respect of any matter which the Authority is empowered by or under this Ordinance to determine.

28. *Protection of action taken in good faith.* — No suit, prosecution or other legal proceedings shall lie against the Central Government or the Authority or any officer of the Central Government or any member, officer or other employees of the Authority for anything which is in good faith done or intended to be done under this Ordinance or the rules or regulations made therunder.

29. *Penalty for contravention of directions of Authority.* — If any person violates directions of the Authority such person shall be punished in the case of first offence with imprisonment for a term which may extend to two years or with fine which may extend to one lakh rupees or with both and in case of a second or subsequent offence, with imprisonment for a term which may extend to two years or with fine which may extend to two lakh rupees for each day of default.

30. *Offences by companies.* — (1) Where an offence under this Ordinance has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Ordinance, if he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Ordinance has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation. — For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

31. *Exemption from tax on wealth and income.* —

Notwithstanding anything contained in the Wealth-tax Act, 1957, the Income-tax Act, 1961, or any other enactment for the time being in force relating to tax on wealth, income, profits or gains, the Authority shall not be liable to pay wealth-tax, income-tax or any other tax in respect of their wealth, income, profits or gains derived.

32. *Delegation.* — The Authority may, by general or special order in writing, delegate to any member, officer of the Authority or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Ordinance (except the power to settle dispute under Chapter IV and to make regulations under section 35) as it may deem necessary.

33. *Cognizance of offences.* — (1) No court shall take cognizance of any offence punishable under this Ordinance or the rules or regulations made thereunder, save on a complaint made by the Authority.

(2) No court inferior to that of a metropolitan magistrate or a judicial magistrate of the first class shall try any offence punishable under this Ordinance.

34. *Power to make rules.* — (1) The Central Government may, by notification, make rules for carrying out the purposes of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the salary and allowances payable to and the other conditions of service of the members under sub-section (6) of section 5;

(b) the powers and functions of the Chairperson under sub-section (1) of section 6;

(c) the category of books of account or other documents which are required to be maintained under sub-section (3) of section 12;

(d) the period within which an application is to be made under sub-section (1) of section 15;

(e) the manner in which the accounts of the Authority shall be maintained under sub-section (1) of section 23;

(f) the time within which and the form and manner in which returns and report are to be made to the Central Government under sub-section (1) and (2) of section 24;

(g) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

35. *Power to make regulations.* — (1) The Authority may, with the previous approval of the Central Government, by notification, make regulations consistent with this Ordinance and the rules made thereunder to carry out the purposes of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the times and places of meetings of the Authority and the procedure to be followed at such meetings under sub-section (1) of section 8, including quorum necessary for the transaction of business;

(b) the transaction of business at the meetings of the Authority under sub-section (4) of section 8;

(c) the salaries and allowances payable to and the other terms and conditions of service of officers and other employees of the Authority under sub-section (2) of section 10;

(d) levy of fees under clause (i) of sub-section (1) of section 11.

36. *Rules and regulations to be laid before Parliament.* — Every rule and every regulation made under this Ordinance shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session

immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

37. Application of certain laws. — The provisions of this Ordinance shall be in addition to the provisions of the Indian Telegraph Act, 1885 and the Wireless Telegraph Act, 1933 and, in particular, nothing in this Ordinance shall affect any jurisdiction, powers and functions required to be exercised or performed by the Telegraph Authority in relation to any area falling within the jurisdiction of such Authority.

38. Power to remove difficulties. — (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Ordinance as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Ordinance.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

SHANKER DAYAL SHARMA

President.

K. L. MOHANPURIA,

Secy. to the Govt. of India.

Notification

10-5-96/LA

The Technology Development Board Act, 1995 (Central Act 44 of 1995), which has been passed by the Parliament and assented to by the President of India on 16th December, 1995 and published in the Gazette of India, Extraordinary, Part II, Section I dated 18th December, 1995 is hereby published for general information of the public.

P. V. Kadneker, Joint Secretary (Law).

Panaji, 1st April, 1996.

THE TECHNOLOGY DEVELOPMENT BOARD, ACT 1995

AN

ACT

To provide for the constitution of a Board for payment of equity capital or any other financial assistance to industrial concerns and other agencies attempting development and commercial application of indigenous technology or adapting imported technology to wider domestic applications and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Forty-sixth Year of the Republic of India as follows:—

CHAPTER I

Preliminary

1. Short title and commencement. — (1) This Act may be called the Technology Development Board Act, 1995.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions. — In this Act, unless the context otherwise requires, —

(a) "Board" means the Technology Development Board constituted under sub-section (1) of section 3;

(b) "Chairperson" means the Chairperson of the Board;

(c) "Fund" means the Fund for Technology Development and Application constituted under sub-section (1) of section 9;

(d) "member" means a member of the Board and includes the Chairperson;

(e) "prescribed" means prescribed by rules made under this Act;

(f) "Secretary" means the Secretary of the Board appointed under sub-section (1) of section 4;

(g) words and expressions used herein and not defined but defined in the Research and Development Cess Act, 1986, shall have the meanings respectively assigned to them in that Act.

CHAPTER II

Technology Development Board

3. Constitution and incorporation of the Board. — (1) The Central Government shall by notification in the Official Gazette, constitute, for the purposes of this Act, a Board to be called the Technology Development Board.

(2) The Board shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to contract and shall, by the said name, sue and be sued.

(3) The Board shall consist of the following members, namely:—

(a) the secretary to the Government of India *ex officio* in charge of the Ministry or Department of the Central Government dealing with Science and Technology

(b) the Secretary to the Government of India in charge of the Ministry or Department of the Central Government dealing with Scientific and Industrial Research; *ex officio*

(c) the Secretary to the Government of India in charge of the Ministry or Department of the Central Government dealing with Finance (Expenditure); *ex officio*

(d) the Secretary to the Government of India in charge of the Ministry or Department of the Central Government dealing with Defence, Research and Development; *ex officio*

(e) the Secretary to the Government of India in charge of the Ministry or Department of the Central Government dealing with Industrial Development; *ex officio*

(f) the Secretary to the Government of India in charge of the Ministry or Department of the Central Government dealing with Rural Development; *ex officio*

(g) such number of persons, not exceeding four as may be prescribed, to be appointed by the Central Government from amongst persons having experience in technology development and application, banking and finance, industry, agriculture and rural development; and *ex officio*

(h) Secretary of the Board. *ex officio*

(4) The term of office and other conditions of service of members specified in clause (g) of sub-section (3) shall be such as may be prescribed.

(5) The Chairperson shall, in addition to presiding over the meetings of the Board, exercise and discharge such powers and duties of the Board as may be delegated to him by the Board and such other powers and duties as may be prescribed.

(6) No act or proceeding of the Board shall be invalidated merely by reason of —

(a) any vacancy in, or any defect in the constitution of, the Board;

(b) any defect in the appointment of a person acting as a member of the Board;

(c) any irregularity in the procedure of the Board not affecting the merits of the case.

4. Secretary and other officers and employees of the Board. —

(1) The Board may appoint the Secretary and such other officers and employees as it considers necessary for the efficient discharge of its functions under this Act.

(2) The terms and conditions of service of the Secretary and other officers and employees of the Board shall be such as may be determined by regulations.

5. Committees of the Board. — (1) Subject to the rules made in this behalf, the Board may appoint such committees as may be necessary for the efficient discharge of its duties and performance of its functions under this Act.

(2) The Board shall have the power to co-opt as members of any committee appointed under sub-section (1), such number of per-

sons who are not members of the Board as it may think fit, and the person so co-opted shall have the right to attend the meetings of the committee, and take part in the proceedings of the committee, but shall not have the right to vote.

6. Functions of the Board. — The Board may —

(a) provide equity capital, subject to such conditions as may be determined by regulations, or any other financial assistance to industrial concerns and other agencies attempting commercial application of indigenous technology or adapting imported technology of wider domestic applications;

(b) provide financial assistance to such research and development institutions engaged in developing indigenous technology or adaptation of imported technology for commercial application, as may be recognised by the Central Government;

(c) perform such other functions as may be entrusted to it by the Central Government.

CHAPTER III

Application for grant of Finance Assistance

7. Application for grant of financial assistance, etc. — (1) An application for grant of financial assistance for the purposes mentioned under section 6 shall be made to the Board in such form as may be prescribed.

(2) The Board may, after examining the application and after making such enquiries as it deems necessary by order in writing either grant the financial assistance or refuse to grant the same:

Provided that no refusal of grant shall be made unless an opportunity is given to the applicant of being heard.

CHAPTER IV

Finance, Accounts and Audit

8. Grants and loans by the Central Government. — The Central Government may, after due appropriation made by Parliament by law, in this behalf, make to the Board grants and loans of such sums of money as that Government may consider necessary.

9. Fund for Technology Development and Application. — (1) There shall be constituted a Fund to be called the Fund for Technology Development and Application and there shall be credited to the Fund —

(a) any grants and loans made to the Board by the Central Government under section 8;

(b) all sums received by the Board from any other source;

(c) recoveries made of the amounts granted from the Fund; and

(d) any income from investment of the amount of the Fund.

(2) The Fund shall be applied for meeting —

(a) expenses on the objects and for the purposes authorised by this Act;

(b) salaries, allowances and other expenses of officers and other employees of the Board; and

(c) expenses of the Board in the discharge of its functions under this Act.

10. Transfer of money receipts and liabilities. — On and from the commencement of this Act, —

(a) the moneys standing at the credit of the Venture Capital Fund formed under section 5 of the Research and Development Cess Act, 1986 which is 32 of 1986 part of the Development Assistance Fund established by the Development Bank under section 14 of the Industrial Development Bank of India Act, 1964 18 of 1964 shall stand transferred to and vest in the Board;

(b) all sums of money due to the Development Bank immediately before such commencement shall be deemed to be due to the Board;

(c) all debts, obligations and liabilities incurred, all contracts or agreements entered into and all matters and things engaged to be done by, with or for the Development Bank immediately before such commencement for or in connection with the purpose of the Venture Capital Fund shall be deemed to have been incurred, entered into or engaged to be done by with or for the Board; and

(d) all suits and other legal proceedings instituted or which could have been instituted by or against the Development Bank immediately before such commencement may be continued or instituted by or against the Board.

11. Budget. — The Board shall prepare, in such form and at such time in each financial year, as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of the Board and forward the same to the Central Government.

12. Annual Report. — The Board shall prepare, in such form and at such time in each financial year, as may be prescribed, its annual report, giving a full account of its activities during the previous financial year, and submit a copy thereof to the Central Government.

13. Accounts and audit. — (1) The Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The Comptroller and Auditor-General of India or any other person appointed by him in connection with the auditing of the accounts of the Board under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the auditing of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Board under this Act.

(3) The accounts of the Board shall be audited by the Comptroller and Auditor-General of India annually and any expenditure incurred in connection with such audit shall be payable by the Board to the Comptroller and Auditor-General of India.

(4) the Board shall furnish to the Central Government before such date as may be prescribed its audited copy of accounts together with auditor's report.

14. Annual report and auditor's, report to be laid before Parliament. — The Central Government shall cause the annual report and auditor's report to be laid, as soon as may be after they are received, before each House of Parliament.

CHAPTER V

Miscellaneous

15. Returns to be furnished to the Board. — (1) An industrial concern or an institution receiving financial assistance from the Board shall furnish returns to the Board in such form and at such time as may be determined by regulations.

(2) The Board may authorise an officer to visit any industrial concern or institution referred to in sub-section (1) at any time to verify the accuracy of any return made under this section.

16. Power of the Central Government to issue directions. — (1) Without prejudice to the foregoing provisions of this Act, the Board shall, in the discharge of its functions and duties under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Provided that the Board shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) the decision of the Central Government whether a question is one of the policy or not shall be final.

17. Power of Central Government to supersede the Board. — (1) If at any time the Central Government is of opinion —

(a) that on account of grave emergency, the Board is unable to discharge the functions and the duties imposed on it by or under the provisions of this Act; or

(b) that the Board has persistently made default in complying with any direction issued by the Central Government under this Act or in the discharge of the functions and duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Board or the administration of the Board has deteriorated; or

(c) that circumstances exist which render it necessary in the public interest so to do,

the Central Government may, by notification in the Official Gazette, supersede the Board for such period, not exceeding six months, as may be specified in the notification.

(2) Upon the publication of a notification under sub-section (1) superseding the Board, —

(a) all the members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Board shall, until the Board is reconstituted under sub-section (3), be exercised and discharged by such person or persons as the Central Government may direct; and

(c) all property owned or controlled by the Board shall, until the Board is reconstituted under sub-section (3), vest in the Central Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government may reconstitute the Board by a fresh appointment and in such case any person or persons who vacated their offices under clause (a) sub-section (2), shall not be deemed to be disqualified for appointment:

Provided that the Central Government may, at any time, before the expiration of the period of supersession, take action under this sub-section.

(4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

18. *Delegation.* — The Board may, by general or special order in writing delegate to the Chairperson or any other member or to any officer of the Board, subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and functions under this Act (except the power under section 22) as it may deem necessary.

19. *Members, officers and employees of the Board to be public servants.* — All members, offices and other employees of the Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of ⁴⁵ of 1860, section 21 of the Indian Penal Code.

20. *Protection of action taken in good faith.* — No prosecution or other legal proceeding shall lie against the Government, or the Board or any committee appointed by it or any member of the Board or such committee, or any officer or employee of the Government or the Board or any other person authorised by the Government or the Board, for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

21. *Power of Central Government to make Rules.* — (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: —

(a) the number of members of the Board under clause (g) of sub-section (3) of section 3;

(b) the term of office and other conditions of service of the members of the Board, under sub-section (4) of section 3;

(c) the powers and duties of the chairperson under sub-section (5) of section 3;

(d) the constitution of committees under sub-section (1) of section 5;

(e) the form of application under sub-section (1) of section 7;

(f) the form in which, and the time at which the Board shall prepare its budget under section 11 and its annual report under section 12;

(g) the form of annual statement of accounts under sub-section (1) of section 13 and the date before which the audited copy of the accounts may be furnished to the Central Government under sub-section (4) of that section;

(h) any other matter which is to be, or may be, prescribed or in respect of which provision is to be, or may be, made by rules.

22. *Power of Board to make regulations.* — (1) The Board may, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations consistent with this Act and the rules generally to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely: —

(a) the terms and conditions of service of the Secretary and other officers and employees of the Board under sub-section (2) of section 4;

(b) the conditions subject to which equity capital may be provided by the Board under clause (a) of section 6;

(c) the form in which and the time at which the returns may be furnished to the Board under sub-section (1) of section 15.

23. *Rules and regulations to be laid before Parliament.* — Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.